be maintained upon a broader and more satisfactory ground, and that is the loss of *consortium*, or the right of the husband to the conjugal fellowship and society of his wife." This is a rather surprising assertion, as the action for loss of *consortium* is generally supposed to be maintainable only against one who seduces or entices away a wife after marriage. The New York court, however, says that the gist of the action lies in the husband being deprived of a certain right, and whether he is deprived of it after acquiring it, or prevented from acquiring it, is immaterial. In other words, "when he entered into the marriage relation, he was entitled to the company of a virtuous woman, yet, through the fraud of the defendant, that right never came to him. . . . The injury, although effected by fraud before marriage, instead of by seduction after marriage, was the same, and why should not the remedy be the same?" This reasoning seems inconclusive. In the absence of the element of deceit, it is clear that the seducer of a woman is under no liability to the man she subsequently marries. Why should the presence of this element bring the case within the scope of the action for loss of *consortium?* The defendant in *Kujek* v. *Goldman* had certainly done the plaintiff a great wrong, but the action for deceit afforded the latter an ample remedy. One may well wonder why the court should have gone out of its way to enter such questionable territory.

LORD RUSSELL'S VALEDICTORY TO THE AMERICAN BAR ASSOCIATION. — At Saratoga last August, after Mr. Austen G. Fox had finished the reading of his paper on Two Years' Experience of the New York State Board of Law Examiners, which is printed in this number of the REVIEW, Lord Russell arose and made some rather extended remarks. After speaking of the enormous influence exerted by the Bar in all civilized countries, and of the high importance that all who enter the profession should be required to bring to its duties an adequate equipment, he turned to the topic of the American Bar Association, and American lawyers in general, and concluded as follows: "I would like before I sit down to be allowed to express the admiration I feel, not only for the constitution of this Congress of United States lawyers, but for the scheme of its operations, and the wise purposes to which it devotes its efforts. Its work is not new to me. I have had the pleasure of seeing now for some years the record of its proceedings, and it is to me, as it was on hearing the admirable presidential address which was delivered on Wednesday, in the highest degree refreshing to find that the members of the Bar in this country are so earnestly alive to the responsibilities of their position, are so keen to observe, to weigh, to judge, to discriminate, to test the current of judgment and of legislation, and that above all they keep before themselves steadfastly and unceasingly a high ideal of what ought to be, not merely the mental equipments and the acquirements in learning, but the high moral character of the profession to which they belong."

WHO SHOULD PAY COSTS? — To leave each party to a lawsuit to pay his own expenses, as is practically done in Massachusetts, seems an evident selling of justice. Justice, to be sure, is like any other commodity in that it costs to produce it; but when the cost of justice is more than the man who needs it can afford to pay, or more than it is worth to him

in his particular case, it is intolerable that he should be forced to go without it. In England they manage things better, on the whole, by making the unsuccessful party pay in general all the expenses of the litigation. The frequent hardships caused by the strict application of this rule, which punishes the unsuccessful party for his mistake in bringing or resisting the claim, with a severity usually in direct proportion to the doubtfulness of the matter in dispute, are well pointed out in an article in the Law Quarterly Review for October. The impracticability of a thorough application of the principle, and its real lack of fairness in many cases, causes it to be much relaxed in the actual practice of the English courts. But such a relaxation, except in cases where the successful party is morally at fault, is merely a return to the more primitive form of injustice. The only apparently effective way of removing the evils of present systems of imposing costs is to have the State pay them, and distribute justice gratuitously. However revolutionary such a step may seem, however great the practical difficulties of the change, it may be doubted whether the new evils that would arise would be as great as those we now endure. The people would have to pay heavier taxes; but it would be for a purpose at least as beneficial as many of those for which government funds are at present used; and as for the supposed increase of litigation that would be brought about by the cheapness of justice, there are, as the writer of the above article points out, two sides to the question. The man who brings suits knowing them to be unfounded can be restrained in more direct ways than by the fear of costs; while he who threatens to bring unjust suits, or refuses just demands, in a frequently well-founded reliance on his victim's reluctance to becoming involved in the risk and expense of a lawsuit, would have no chance under the new system.

FORMER ACQUITTAL UNDER A DEFECTIVE INDICTMENT. — The rule of English criminal law, that a prisoner who has been acquitted after trial on an insufficient indictment may be indicted again for the same offence, has hitherto been followed wherever the question has arisen. If there were any cases to the contrary, it may be assumed that they would be noticed in the learned opinion in the case of *Ball* v. *U. S.*, 163 U. S. 662, which decides that a general verdict of acquittal is a bar to a second indictment, though the first indictment was defective. The usually accepted doctrine is founded on *Vaux's Case*, 4 Coke, 44, a most venerable authority. Both Lord Coke and Lord Hale, however, considered that *Vaux's Case* was to be supported only on the ground that the judgment, which was after a special verdict, was in such a form as to leave it doubtful whether the acquittal was on the merits or for the fault in the indictment, and the presumption must be that it was for the latter cause. (See 3 Inst. 214; 2 Hale P. C. 248, 394.) Apart from the actual probability that the judgment in that case was really given upon the merits (see 1 Starkie Cr. Pl., 2d ed., 320), it seems unjust to give the benefit of the doubt to the prosecution; Lord Hale says, "The judgment in *Vaux's Case* was one of the hardest I ever met with in criminal causes." (2 P. C. 394.) In the common practice, both of that day and this, if a judgment or verdict of acquittal is for defect in the indictment that fact will appear on the face of the record.

With whatever degree of reason the rule as to acquittals on insufficient indictments may have been founded on *Vaux's Case*, it is now